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OFFICE OF PETITIONS

In re Application of	:
Patrick	:
Application No. 10/081,847	: DECISION DISMISSING
Filed: 26 February, 2002	: PETITION
Attorney Docket No. N883B	:

This is a decision on the petition filed on 22 May, 2002, requesting that the above-identified application be accorded a filing date of 26 February, 2002, with Page 2 of the specification as a part of the original disclosure.

On 26 February, 2002, the application was filed.

On 29 March, 2002, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts of Nonprovisional Application stating that the application had been accorded a filing date of 26 February, 2002, but that, *inter alia*, Page 2 of the specification (description and claims) appeared to have been omitted from the application.

In response, on 22 May, 2002 (certificate of mailing date 10 May, 2002, the present petition was filed. Petitioners argue that Page 2 of the specification was not missing on 26 February, 2002. In support, petitioners point to their postcard receipt as evidence that Page 2 of the specification was among the application papers filed on 26 February, 2002. Petitioners request that the application be accorded a filing date of 26 February, 2002, with Page 2 as a part of the original disclosure.

The argument and evidence supplied with the petition have been carefully considered, but are not persuasive. The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt

is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503).

Unfortunately, in this case, petitioners' postcard receipt fails to itemize the papers allegedly filed in this application. The postcard receipt does not itemize the number of pages of specification filed, or a specification at all. A postcard receipt will not serve as prima facie evidence of receipt in the USPTO of any items which are not properly itemized and identified.

The petition is dismissed.

It is noted that the application transmittal letter identified this application as a continuation of prior application No. 09/656,313 and specifically incorporated by reference the disclosure of the prior application. MPEP 201.06(c) states that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition.  
(emphasis supplied)

Obviously, in view of the incorporation by reference of the prior application, Page 2 of the specification is not new matter if it was a part of the disclosure of the prior application.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of 26 February, 2002, using the application papers filed on that date.

The copy of Page 2 of the specification supplied with the present petition will not be used for processing or examination, but will be retained in the application file. Petitioner may file Page 2 as a preliminary amendment.

As this petition was necessitated by applicants' filing error rather than an error on the part of the Office, the petition fee will not be refunded.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 26 February, 2002, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood, at (703) 308-6918.



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